

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**ANDRE' L. MAYFIELD v. JIM MORROW, WARDEN**

**Appeal from the Circuit Court for Bledsoe County**  
**No. 13-2008     J. Curtis Smith, Judge**

---

**No. E2008-01801-CCA-R3-HC - Filed September 8, 2009**

---

The petitioner, Andre' L. Mayfield, appeals from the Bledsoe County Circuit Court's dismissal of his petition for habeas corpus relief. The State has moved to have this court summarily affirm the dismissal pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. We grant the motion and affirm the order of dismissal pursuant to Rule 20.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**  
**Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and NORMA MCGEE OGLE, J.J., joined.

Andre' L. Mayfield, appellant, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Benjamin A. Ball, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

The petitioner filed a pro se petition for writ of habeas corpus challenging the legality of the sentences he received in 1989 from the Davidson County Criminal Court in case numbers 88-F-1762 and 89-W-222. According to the allegations set forth in the petition, initial attachments, and supplement thereto, the petitioner pled guilty to simple robbery in case number 88-F-1762 in exchange for a five-year sentence; pled guilty to receiving stolen property in case number 89-W-222 in exchange for a five-year sentence; and pled guilty to burglary in case number IF-5635 in exchange for a three-year sentence which would be suspended. The offense in case number 88-F-1762 occurred on February 21, 1988. The offense in case number 89-W-222 occurred on October 27, 1988. Pursuant to the terms of the petitioner's negotiated plea agreement, the five-year sentences were ordered to be served concurrently with one another and were to be followed by the three-year sentence, for a total effective sentence of eight (8) years. The petitioner had been on bond for the robbery offense when he committed the other two offenses. The judgments in case numbers 88-F-

1762 and 89-W-222 indicated on their faces that the petitioner was rendered infamous as a result of his convictions for the felonies in those cases.

The petitioner argued in his petition that the concurrent structuring of his five-year sentences occurred in violation of Tennessee Code Annotated section 40-20-111(b), which states:

In any case in which a defendant commits a felony while such defendant was released on bail . . . , and the defendant is convicted of both such offenses, the trial judge shall not have discretion as to whether the sentences shall run concurrently or cumulatively, but shall order that such sentences be served cumulatively.

The petitioner therefore argued that he is entitled to withdraw his plea, in accordance with McLaney v. Bell, 59 S.W.3d 90, 95 (Tenn. 2001), because the overall sentence he bargained for is illegal. He further argued that the declaration of infamy in the challenged judgments, which resulted in the loss of his right to vote, entitles him to habeas corpus relief from the challenged judgments under May v. Carlton, 245 S.W.3d 340 (Tenn. 2008).

In his petition, the petitioner acknowledged that, before the present petition, he had filed six (6) other petitions for habeas corpus relief. Attached to the petition in this case were the judgments and accompanying opinions, issued by this court in the appellate proceedings arising out of five of those prior habeas corpus proceedings, as well as a trial court order denying relief in the one prior proceeding in which the petitioner did not perfect an appeal.

The trial court dismissed the petition without a hearing on the grounds that the petitioner had raised the same challenge to the judgments in case numbers 88-F-1762 and 89-W-222 in at least two prior habeas corpus proceedings and that in both prior proceedings it had been determined that the petitioner was not entitled to relief because he was no longer serving the sentences imposed by the challenged judgments. As set forth in both the State's motion for summary affirmance and this court's opinions in Andre' L. Mayfield v. Howard Carlton, Warden, No. M2006-00885-CCA-R3-HC, 2006 WL 3290818, \* 2 (Tenn. Crim. App., at Nashville, Nov. 13, 2006), and Andre Mayfield v. Howard Carlton, Warden, No. E2004-01561-CCA-R3-HC, 2005 WL 394587, \* 2 (Tenn. Crim. App., at Knoxville, Feb. 18, 2005), the petitioner is not entitled to habeas corpus relief from the challenged judgments on grounds that he pled to an illegal sentence in that his sentences in case numbers 88-F-1762 and 89-W-222 were improperly ordered to run concurrently rather than consecutively. This court noted in its prior opinions addressing this claim that the petitioner "was sentenced to an effective term of eight years for his 1989 convictions," that "[t]hose sentences have long since expired," that he is "no longer restrained of his liberty as a result of his 1989 convictions," and that he is "not entitled to seek habeas corpus relief thereupon." Mayfield, 2006 WL 3290818 at \* 2 (quoting Mayfield, 2005 WL 39487 at \*2). In fact, as this court explained in its 2006 opinion, the petitioner is presently serving an effective sentence of fifty (50) years imprisonment for offenses for which he was found guilty by a jury in 1999 and he is not presently incarcerated pursuant the 1989 judgments. See id. at \* 1.

The petitioner argues in response to the State's motion for summary affirmance that in accordance with our supreme court's opinion in May v. Carlton, 245 S.W.3d 340 (Tenn. 2008),

it is irrelevant that he is no longer serving the sentences imposed by the 1989 judgments. The petitioner asserts that because those judgments rendered him infamous and thereby deprived him of his right to vote, any illegality in those judgments can now be remedied by a petition for writ of habeas corpus pursuant to the supreme court's opinion in May.

After due consideration of the reasons given by the trial court for dismissing the petition, our opinions in the petitioner's prior habeas corpus proceedings, and the law governing the issues presented, we have determined that the State's motion is well-taken, that the record supports the trial court's order of dismissal, that no error of law exists that would require reversal, and that no precedential value would be derived from the rendering of an opinion in this case. In Hickman v. State, 153 S.W.3d 16, 23 (Tenn. 2004), our supreme court held that "a person is not 'restrained of liberty' for purposes of the habeas corpus statute unless the challenged judgment itself imposes a restraint upon the petitioner's freedom of action or movement." The supreme court in May held that an erroneous declaration of infamy qualifies as a restraint on liberty for purposes of habeas corpus relief. See May, 245 S.W.3d at 346. Thus, it appears that the petitioner is taking the position that the holding in May undercuts the rationale used by this court in rejecting his two prior attempts at obtaining habeas corpus relief from his 1989 judgments. This might be true if, as in May, the declarations of infamy in the petitioner's 1989 judgments were erroneously imposed. However, the face of the petitioner's 1989 judgments reflect that he committed his offenses after the statute defining infamous crimes was amended to include all felonies. See Gaskin v. Collins, 661 S.W.2d 865, 866 (Tenn. 1983) (noting that the statutory amendment became law on May 18, 1981). The petitioner was not erroneously declared infamous in the challenged 1989 judgments. His argument under May fails, and an opinion making that clear would lend nothing to the body of habeas corpus law in this state.

Accordingly, we hereby GRANT the State's motion for summary affirmance and the trial court's order dismissing the petition for writ of habeas corpus is AFFIRMED pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

---

JOSEPH M. TIPTON, PRESIDING JUDGE